The Court has never considered the constitutionality of a purely *state* regulation of *state* candidate expenditures. *Buckley* related solely to a federal regulation of federal candidates and did not consider whether campaign expenditure limits for state or local elections were constitutional. And the analysis of Vermont's expenditure limits should take into account that it is a state regulation of state elections, a distinction from *Buckley* that changes the constitutional calculus in at least two ways. First, the state's authority to decide how state representatives are selected represents a significant interest in its own right. Second, the smaller scale, structure, and process of state government warrant a greater deference to the interests above and beyond corruption, interests that justify campaign expenditure limitations and temper countervailing First Amendment concerns.

II. STATE REGULATION OF ELECTIONS, AND THE POWER OF STATES TO GOVERN THEMSELVES, COMPEL A DIFFERENT (AND MORE DEFERENTIAL) BALANCING OF THE INTERESTS BEARING ON EXPENDITURE RESTRICTIONS.

The undeniable fact that expenditure limits implicate the First Amendment does not end the inquiry. First Amendment concerns must be balanced against competing constitutional concerns, *see McConnell*, 540 U.S. at 136-37 (considering competing interests such as the integrity of the electoral process), including those First Amendment interests preserved by campaign spending limits. In the specific case of the Vermont expenditure limits, a number of competing interests should be considered and balanced along with anti-corruption interests, among them (1) the local electorate's interest in governing its own elections and (2) Vermont's interest in protecting the integrity of its government.

Vermont's first obvious and fundamental interest lies in the undeniable right of its citizens to determine their own form of government and regulate their own elections. "No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution . . . the nature of their own machinery for filling local public offices." *Oregon v. Mitchell*, 400 U.S. 112, 125 (1970).[5] The right of citizens to determine how their state officials are to be elected appears in the text of the Constitution, *see, e.g.*, U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government."); U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people."), and has been affirmed repeatedly by this Court. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991) ("the authority of the people of the States to determine the qualifications of their most important government officials . . . lies at 'the heart of representative government'" and "is a power reserved to them" by the Tenth Amendment and the Guarantee Clause) (quoting *Bernal v. Fainter*, 467 U.S. 216, 221 (1984)); *Sugarman v. Dougall*, 413 U.S. 634, 648 (1973) (a state has a "constitutional responsibility for the establishment and operation of its own government, as well as the qualifications of an appropriately designated class of public office holders").[6]

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[5] *See also Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 161 (1892) ("Each state has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen."); *Duncan v. McCall*, 139 U.S. 449, 461 (1891) ("the distinguishing feature" of a republican form of government "is the right of the people to choose their own officers for governmental administration, and pass their own laws").

[6] *See also Bates v. Jones*, 131 F.3d 843, 859 (9th Cir. 1997) (Rymer, J., concurring) ("to define how the [people of California]

Vermont should have the right to decide how to elect its state representatives, and that interest merits significant weight in any analysis of state campaign finance regulations.[7] In a related context, the Court "has never held that the [Fourteenth] Amendment may be applied in complete disregard for a State's constitutional powers. Rather, the Court has recognized that the States' power to define the qualifications of their officeholders has force even as against the proscription of the Fourteenth Amendment." *Gregory*, 501 U.S. at 468. In other contexts, the Court has calibrated the level of scrutiny to accord greater deference to local decision making in matters falling deeply within the prerogatives of state officials. So, for example, the Court deferred to a state's requirement of citizenship as a qualification for certain offices because "our scrutiny will not be so demanding where we deal with matters resting firmly

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want to be represented is a right secured to the citizens of each state"), *cert. denied*, 523 U.S. 1021 (1998); Deborah Jones Merritt, *Republican Governments and Autonomous States: A New Role for the Guarantee Clause*, 65 U. Colo. L. Rev. 815, 816 (1994) ("Most scholars would agree that a republican government is, at the very least, one in which the people control their rulers."); Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Colum. L. Rev. 1, 41 (1988) ("The guarantee clause . . . grants states control over their internal governmental machinery.").

[7] *See* Thomas Jefferson, *Drafts of the Kentucky Resolution of 1798*, in *The Works of Thomas Jefferson in Twelve Volumes* 458 463-464 (Paul Leicester Ford ed., G.P. Putnam's Sons 1904) (1798). Thus it is for the States or the people "to retain to themselves the right of judging how far the licentiousness of speech and the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed." *Id.; see also* Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 222 (1998) (suggesting that the First Amendment should be treated differently when it is applied to the states under the doctrine of incorporation).

within a State's constitutional prerogatives." *Sugarman*, 413 U.S. at 648; *see also Gregory*, 501 U.S. at 462-463 (scrutiny is "less exacting" of state laws determining the qualifications of state officials). Vermont's right to govern and its interest in governing its own elections similarly are local interests of independent constitutional significance.

A second and equally important interest supporting expenditure limits is Vermont's interest in preserving the intergrity of its government. This interest lies in the stated rationales for Vermont's campaign expenditure limits: preventing actual or apparent corruption, promoting electoral competition, reducing officeholders' time devoted to fundraising, and bolstering public involvement and confidence in the electoral process.[8] All of these rationales are directed at the underlying goal of ensuring effective representative democracy,[9] a goal that the United States, including the federal judiciary, has a constitutional obligation to help state government achieve. *See* U.S. Const. art. IV, § 4; *Nixon*, 528 U.S. at 401 (Breyer, J., concurring); *see generally* Mark C. Alexander, *Campaign Finance Reform: Central Meaning and a New Approach*, 60 Wash. & Lee L. Rev. 767 (2003).

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[8] *Landell*, 382 F.3d at 115. Apart from the competing constitutional interest of strengthening representative government, these rationales also represent valid compelling government interests justifying the restrictions imposed by Vermont's expenditure limits under the strict scrutiny analysis set forth by this Court in *Buckley* for federal expenditure limits. *Id.* at 115-25 (finding that preventing actual and apparent corruption and protecting the time of candidates can be compelling interests).

[9] As the Second Circuit made clear, the state's interest in preserving the integrity of the electoral process is an underlying basis for preventing actual and apparent corruption and protecting candidate time. *Landell*, 382 F.3d at 124 n.18.

To foster effective representative democracy, a state government must have the authority to enact campaign finance laws that support open debate and encourage political participation, as that state judges appropriate to its circumstances. But most states' current system of unlimited expenditures has not protected the First Amendment's guarantee of a fair and open democratic process.[10] Today's unlimited-expenditure campaigns stifle the voices of the majority of the electorate because the bulk of campaign spending goes toward the purchase of costly broadcast media campaign speech.[11] The majority of campaign speech, therefore, is controlled by a small number of candidates capable of spending unlimited sums of money. And as the broadcast speech drowns out other forms of expression, the ordinary electorate struggles for any effective means of raising its own issues and influencing the debate and discussion that leads to informed electoral choices. Moreover, modern spending levels discourage challengers from participating in the electoral process; and the resulting elimination of competition smothers meaningful discussion of political issues. *Landell*, 382 F.3d at 128.

Vermont's interest in protecting and strengthening its own representative government by limiting expenditures outweighs *competing* First Amendment concerns. "[P]reserving the integrity of the electoral process . . . is [an] interest[] of the highest importance." *See First National Bank v. Bellotti*, 435 U.S. 765, 788-789 (1978). Vermont's

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[10] *See, e.g.*, Burt Neuborne, *Toward a Democracy-Centered Reading of the First Amendment*, 93 Nw. U. L. Rev. 1055, 1059 (1999).

[11] *Cf. Landell*, 382 F.3d at 130 (stating that, with expenditure limits in place, candidates have the opportunity to engage in low-cost campaigning, like town barbeques and door-to-door campaigning); *see, e.g.*, James V. Grimaldi & Thomas B. Edsall, *Super Rich Step Into Political Vacuum: McCain-Feingold Paved Way for 527s*, Wash. Post, Oct. 17, 2004, at A01.

expenditure limitations promote the general constitutional objective of open and active representational democracy by allowing a broader segment of the electorate to run for office, by reducing the impression that campaigns are bought and sold by wealthy contributors, by liberating officials and candidates from the constant need to neglect substantive matters for fundraising responsibilities, and by ensuring that public discourse remains uninhibited, robust, and open to the entire electorate.[12] For these reasons, Vermont's experiment with reasonable expenditure limits will lead to greater trust in state elections and promote greater competition and public participation in state elections. "Encouraging citizens to vote is a legitimate, indeed essential, state objective; for the constitutional order must be preserved by a strong, participatory democratic process," *California Democratic Party v. Jones*, 530 U.S. 567, 587 (2000) (Kennedy, J., concurring), and thus, the state electorate's responsibility for operating its own government, especially when combined with its interests in preserving the health of representative government, outweighs infringements on free speech that result from reasonable limits on local candidates' campaign expenditures.

III. THE NATURE OF STATE GOVERNMENT FURTHER TEMPERS CANDIDATES' FIRST AMENDMENT CONCERNS HERE.

The structure and purpose of state government vary significantly from those of the federal government. "The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designed for different purposes." The Federalist, No. 46, at 294 (James Madison) (Clinton Rossiter ed., 1961). State government meets the unique needs of the state through

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[12] *See Landell*, 382 F.3d at 115-24; *see also Nixon*, 528 U.S. at 401 (Breyer, J., concurring); *id.* at 390-392; *id.* at 409 (Kennedy, J., dissenting).

regulating and monitoring planning and growth initiatives, transportation services, public education, and the daily concerns of constituents. These tasks require state government officials to be more directly involved in the day-to-day minutiae of their communities than representatives to the federal government might be. State officials focus their understanding of state needs differently and interact differently with individuals and local businesses than do representatives with broader national constituencies.

By design, state government officials are more acutely aware than their federal counterparts of the day-to-day needs of state constituents. In theory, state officials should be more accessible and devote more time to constituent needs than their federal counterparts. The Vermont General Assembly found that, prior to Act 64, candidates for state office were spending an inordinate amount of time raising campaign funds in order to avoid being outspent by their opponents. The Second Circuit upheld the District Court's finding that "'the Vermont public perceives, legitimately, that candidates frequently spend an excessive amount of time fundraising and not enough time interacting with voters.'" *See Landell*, 382 F.3d at 119-24. The need for unlimited campaign dollars forces elected officials to devote attention to identifying and responding to an ever-increasing number of contributors, and Vermont ought to have the ability to counter that disturbing trend.

State officials' intimate relationship with constituents only heightens the potential for and fallout from state corruption or the appearance of state corruption. State government officials frequently are responsible for contracts and other forms of purchases from vendors of public services who are often major contributors to the official's campaign. In smaller geographic areas, where state officials are more likely to be connected to constituent businesses on a personal level, money poured into a candidate's war chest, even in limited amounts, may well be viewed as a *quid pro quo* when

the sum of these contributions greatly outweighs other candidates' funds because it appears that self-interested donors have helped "buy" an election outcome. This corruption or perceived corruption lessens the confidence of citizens in their state government. The legislature of Vermont enacted campaign expenditure limits specifically to combat this possibility, and for the other reasons noted above. *Cf. Nixon*, 528 U.S. at 394.

The opportunity for corruption has special significance at the state level for other reasons as well. For example, the political weight of a dollar in a state election may be greater than the weight of the same dollar in a federal election. *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 649 (6th Cir. 1997), *cert. denied*, 522 U.S. 860 (1997). The more money that appears in these smaller, state electoral systems, the greater the potential for the appearance of corruption. Moreover, states may well be less able to devote scarce time and sparse resources to investigating and combating corrupt fundraising practices.[13]

If a dollar weighs more in state elections, the need for more dollars diminishes. In state elections, a smaller geographic area or smaller number of constituents allows candidates to communicate through less expensive media than candidates for federal office. In the case of Vermont legislative candidates, an effective campaign need not undertake or finance large-scale media campaigns across multiple markets to communicate with voters. Rather, the Vermont legislature found door-to-door communications were preferred and expected among Vermont voters. *Landell*, 382 F.3d at 130-31. Because the cost of running a

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[13] *See* Nancy Northrup, *Local Nonpartisan Elections, Political Parties and the First Amendment*, 87 Colum. L. Rev. 1677, 1681 (1987); Peter Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law*, 18 Ariz. J. Int'l. & Comp. L. 793 (2001).

state election is often far less than a federal campaign, and because a state is best able to determine reasonable expenditure limits based on its unique geography and population, expenditure limits at a state level are unlikely to "drive the sound of a candidate's voice below the level of notice" and thus infringe on the candidate's First Amendment right of free speech. *Cf. Nixon*, 528 U.S. at 397. This plain difference in scale compels a different balancing of interests when analyzing expenditure limitations in a state election than the Court applied when analyzing the federal expenditure limits at issue in *Buckley*.

IV. STATE GOVERNMENTS NEED EVEN GREATER FLEXIBILITY THAN THE DECISION BELOW ALLOWS TO SOLVE THE PROBLEMS ASSOCIATED WITH FINANCING OF STATE ELECTIONS.

Citizens have the greatest interest and the most intimate familiarity with the particular concerns of their states:

> The first and most natural attachment of the people will be to the governments of their respective States. Into the administration of these a greater number of individuals will expect to rise. . . . By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these the people will be more familiar[]. . . .

The Federalist, No. 46, at 294-295 (James Madison) (Clinton Rossiter ed., 1961). As in those early days, citizens and their local leaders are still most familiar with the issues and problems that plague their local electoral systems. Their efforts to formulate appropriate measures to secure their

chosen form of government are, therefore, entitled to deference.[14]

Our system of federalism encourages states to experiment in their electoral systems to provide novel solutions to the problems associated with campaign financing. "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).[15] But the rigid application of *Buckley* by courts other than the Second Circuit has handcuffed states that wish to address the problems that plague their local systems—systems that the voters and local legislators understand far better than the federal courts. In order for local governments to protect and maintain truly representative democracies that are free from corruption, states must be allowed to serve as the testing grounds for new forms of campaign finance reform.

From the very founding of our nation, States have in fact served as laboratories for innovations in government. The

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[14] *See Landell*, 382 F.3d at 97 n.1 ("we respect the Vermont Legislature's similar reliance – in enacting regulations on both campaign contributions and expenditures – on its substantial historical experience with campaign finance reform and its informed predictions about Vermont candidate and donor behavior."); *id.* at 112-13 ("Some degree of deference on the issue of whether there are state interests that justify legislative changes to the State's electoral system may also be appropriate.").

[15] *See also* Stephen Breyer, *Our Democratic Constitution*, Madison Lecture, 77 N.Y.U. L. Rev. 245, 257 (May 2002) ("By guaranteeing state and local governments broad decisionmaking authority, federalist principles facilitate 'novel social and economic experiments,' secure decisions that rest on knowledge of local circumstances, and help to develop a sense of shared purposes among local citizens.").

federal constitution was modeled after the constitutions of the individual states, and federal initiatives have often been derived from state innovations such as the extension of the vote to African Americans, women, and eighteen-year-olds; the abolition of slavery; the direct election of U.S. Senators; workers' compensation legislation; minimum wage laws; and many significant environmental regulations. *See* Frederick Schwarz, *From the Ground Up: Local Lessons From National Reform*, 27 Fordham Urb. L.J. 5, 16-19 (1999). Even after enactment of the Bipartisan Campaign Reform Act – an extraordinary effort at comprehensive reform – the flow of large contributions to support candidates haunts elections at all levels of government across the country. *See* Grimaldi & Edsall, *Super Rich Step Into Political Vacuum*, Wash. Post, Oct. 17, 2004, at A01; *see also McConnell*, 540 U.S. at 224 (explaining that "Money, like water, will always find an outlet," therefore, limiting the use of money is necessary for true reform). The job of reforming the broken system of campaign financing remains unfinished at the national level, and can best be achieved by allowing for innovation in local and state election systems.

This petition presents the Court with an opportunity at a critical time to recalibrate the balance of constitutional interests bearing on campaign expenditure limits in the state and local context. Many states apparently have taken *Buckley* to prohibit expenditure reforms outright.[16] Further,

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[16] The National Conference of State Legislatures, for example, cautions that "the court has ruled that spending limits are constitutional only if they are optional." *Campaign Finance at* http://www.ncsl.org/programs/legman/about/campfin.htm. Vermont's experience is illustrative. Vermont implemented mandatory expenditure limits for primaries in 1961 and general elections in 1971, but repealed those limits in the wake of *Buckley*. 1961 Vt. Laws 178; 1971 Vt. Laws 259; 1975 Vt. Laws (Adj. Sess.) 188. In 1993, Vermont attempted to institute a system of voluntary expenditure limits, but discontinued those efforts when

the Tenth Circuit just last year struck down the only other remaining local expenditure limits of which *amici* are aware--relying on *Buckley* to justify what amounted to a categorical prohibition on expenditure limits.[17] Thus, the limits at issue are the only surviving state-level expenditure limits known to these *amici*, who are active participants in campaign finance legislative efforts around the country.

The Court should take this case to clarify the application of *Buckley* in the state and local contexts, and to correct the assumption, made by many other courts, state legislatures, and local governments, that the First Amendment categorically forbids any limits on the high level of campaign spending in state and local races. With the benefit of almost 30 years of experience since *Buckley*, this case presents an opportunity for the Court to calibrate the important differences in the balance of constitutional considerations affecting state and local elections and to account for the appropriate role of federalism and the value of local electoral participation in the scrutiny of state governments' innovations in the pursuit of democracy.[18]

CONCLUSION

For the foregoing reasons, the Court should grant the petitions as to question one and the conditional cross-petition for a writ of *certiorari*.

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they proved unworkable in practice. *See* Former Vt. Stat. Ann. tit. 17, §§ 2841-42 (1991) (repealed 1997); *Landell*, 382 F.3d at 132.

[17] *See Homans*, 366 F.3d at 914-21.

[18] As Justice Kennedy has stated, "I would leave open the possibility that Congress, or a state legislature, might devise a system in which there are some limits on both expenditures and contributions, thus permitting officeholders to concentrate their time and efforts on official duties rather than on fundraising." *Nixon*, 528 U.S. at 409 (Kennedy, J., dissenting).

Respectfully submitted,

MARTHA TIERNEY
KELLY, HAGLUND, GARNSEY & KAHN L.L.C.
1441 Eighteenth Street,
Suite 300
Denver, Colorado 80202 -1255
(303) 296-9412
Counsel for Amicus Curiae Common Cause

* Counsel of Record

DOUGLAS R.M. NAZARIAN*
PATRICIA A. BRANNAN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
Counsel for other Amici Curiae

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Nos. 04-1528, 04-1530, 04-1697

In the Supreme Court of the United States

NEIL RANDALL, ET AL.,

v.

WILLIAM H. SORRELL, ET AL.

VERMONT REPUBLICAN STATE COMMITTEE, ET AL.,

v.

WILLIAM SORRELL, ET AL.

WILLIAM H. SORRELL, ET AL., AND
VERMONT PUBLIC INTEREST RESEARCH GROUP, ET AL.,

v.

NEIL RANDALL, ET AL., AND VERMONT REPUBLICAN
STATE COMMITTEE, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Joint Appendix

William H. Sorrell
Timothy B. Tomasi
Counsel of Record
Eve Jacobs-Carnahan
STATE OF VERMONT
Office of Attorney General
109 State Street
Montpelier, VT 05609
802/828-3176
802/828-5341 (facsimile)
Counsel for Respondents-Cross-Petitioners

Peter F. Langrock
Mitchell L. Pearl
Counsel of Record
LANGROCK, SPERRY & WOOL
P.O. Drawer 351
Middlebury, VT 05753
802/388-6356
802/388-6149 (facsimile)
Counsel for Petitioners Randall, et al.

(Counsel list continued on inside cover)

Petitions for Writ of Certiorari Filed: May 11, 2005 (04-1528), May 12, 2005 (04-1530), June 14, 2005 (04-1697)
Certiorari Granted: September 27, 2005

Brenda Wright
Counsel of Record
Lisa J. Danetz
John C. Bonifaz
NATIONAL VOTING RIGHTS INSTITUTE
27 School Street, 5th Floor
Boston, MA 02108
617/624-3900
617/624-3911 (facsimile)
Counsel for Respondents-Intervenors-Cross-Petitioners

James Bopp, Jr.
Counsel of Record
Susan Lee
JAMES MADISON CENTER FOR FREE SPEECH
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, IN 47807
812/232-2434
812/235-3685 (facsimile)
Counsel for Petitioners Vermont Republican State Committee, et al.

Mark J. Lopez
Steven R. Shapiro
AMERICAN CIVIL LIBERTIES UNION
Legal Department
125 Broad Street
New York, NY 10004
212/549-2500
212/549-2651 (facsimile)
Counsel for Petitioners Randall, et al.

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari:

Act 64	1a
District Court Opinion (8/10/2000)	21a
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Second Amended Denial of Petition for Rehearing En Banc; Concurring and Dissenting Opinions (4/11/05)	315a

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[1]The opinions of Judges Calabresi and Raggi were filed on May 11, 2005; thus, they were not included with the other Denial of Rehearing opinions printed in the Appendix to the Petition for Certiorari at 315a.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Docket Nos. 2:99-cv-146, 2:99-cv-234, 2:00-cv-57

MARCELLA LANDELL, et al., *Plaintiffs,*
NEIL RANDALL, et al., *Plaintiffs,* and
VERMONT REPUBLICAN STATE COMMITTEE,
Plaintiff

v.

WILLIAM H. SORRELL, et al., *Defendants* and
VERMONT PUBLIC INTEREST RESEARCH GROUP,
et al., *Defendants-Intervenors*

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/21/1999	---	ENDORSED ORDER: granting [28-1] motion to Consolidate Cases (2:99-cv-146 & 2:99-cv-234), consolidated lead case (Judge William K. Sessions III) Cy to parties (pjd) (Entered: 10/22/1999)
03/21/2000	84	ORDER consolidating case with 2:00-CV-57 (copy of original P#28 in 2:00-CV-57), consolidated lead case (Judge William K. Sessions III)

DATE	DOCKET NUMBER	PROCEEDINGS
		[EOD Date 3/21/00] Cy to parties (pjd) (Entered: 03/21/2000)
04/07/2000	---	MINUTE ENTRY: by Judge William K. Sessions III ***** ORDERED: cases remain consolidated, however; court trial will go forward on 5/8 through 5/17 with fact witnesses only; court trial will continue on 5/31 & 6/1 with expert witnesses *****
08/10/2000	130	OPINION AND ORDER 1) Act 64's contribution limits to candidates are constitutional; 2) Act 64's expenditure limits are unconstitutional; 3) Act 64's 25% limit on out-of-state funds is unconstitutional; 4) Act 64's $2000 limit on contributions to political parties is constitutional; 5) Act 64's $2000 limit on contributions to political committees and its various limits on contributions by political committees to candidates is constitutional; 6) Act 64's regulation of related expenditures is

DATE	DOCKET NUMBER	PROCEEDINGS
		constitutional as it relates to candidate contributions but unconstitutional as it relates to candidate expenditures; 7) dfts are herewith enjoined from enforcing the unconstitutional provisions mentioned within this order against pltfs (Judge William K. Sessions III) Cy to parties (law) Modified on 08/14/2000 (Entered: 08/10/2000)
08/10/2000	131	**VACATED - SEE P#168** JUDGMENT (Judge William K. Sessions III) dfts are herewith enjoined from enforcing the unconstitutional provisions mentioned against pltfs case closed Cy to parties (law) Modified on 08/14/2000 Modified on 2/24/2005 (jse). (Entered: 08/10/2000)
09/11/2000	136	NOTICE OF APPEAL by intervenors-defendants VT Public Int Rsrch, League Women Voters, Rural Vermont, Vt OWL, Vt Alliance Consv, Mike Fiorillo, Marion Grey, Phil Hoff, Frank

DATE	DOCKET NUMBER	PROCEEDINGS
		Huard, Karen Kitzmiller, Marion Milne, Daryl Pillsbury, Elizabeth Ready, Nancy Rice, Cheryl Rivers, Maria Thompson re: [131-1] judgment. *****
09/11/2000	138	NOTICE OF APPEAL by defendants William H. Sorrell, John T. Quinn, William Wright, Dale O. Gray, Lauren Bowerman, Vincent Illuzzi, James Hughes, George E. Rice, Joel W. Page, James D. McNight, Keith W. Flynn, James P. Mongeon, Terry Trono, Dan Davis, Robert L. Sand re: [131-1] judgment *****
09/22/2000	146	NOTICE OF CROSS-APPEAL by plaintiffs Donald R. Brunelle, VRLC-PC, VRLC-FIPE re: [131-1] judgment *****
09/22/2000	147	NOTICE OF CROSS-APPEAL by plaintiff VT Republican Comm re: [131-1] judgment. *****

DATE	DOCKET NUMBER	PROCEEDINGS
09/25/2000	148	NOTICE OF CROSS-APPEAL by plaintiffs Neil Randall, George Kuusela, Steve Howard, Jeffrey A. Nelson, John Patch, Vt Libertarian Party re: [131-1] judgment. *****
02/22/2005	168	MANDATE of USCA re: judgment of district court is AFFIRMED in part, VACATED in part, and REMANDED for further proceedings in accordance with the opinion of this Court. (Opinion not scanned; available for viewing at the Burlington Clerk's Office) Each party shall bear its own costs on this appeal. RE: [148] Notice of Appeal filed by Neil Randall, George Kuusela, Steve Howard, Jeffrey A. Nelson, John Patch, The Vermont Libertarian Party; [147] Notice of Appeal filed by Vermont Republican State Committee; [138] Notice of Appeal filed by Vincent Illuzzi, William Wright, William H. Sorrell, John T. Quinn, Dale O. Gray,

DATE	DOCKET NUMBER	PROCEEDINGS
		Lauren Bowerman, James Hughes, Joel W. Page, James D. McNight, James P. Mongeon, Terry Trono, Dan Davis, George E. Rice, Keith W. Flynn, Robert L. Sand; [136] Notice of Appeal filed by Vermont Public Interest Research Group, Cheryl Rivers, Rural Vermont, League of Women Voters of Vermont, Vermont Older Women's League, Vermont Alliance of Conservation Voters, Mike Fiorillo, Marion Grey, Phil Hoff, Frank Huard, Karen Kitzmiller, Marion Milne, Daryl Pillsbury, Elizabeth Ready, Nancy Rice, Maria Thompson; [146] Notice of Appeal filed by Donald R. Brunelle, Vermont Right to Life Committee--Political Committee, Vermont Right to Life Committee--Fund for Independent Political Expenditures. (cwb) (Entered: 02/22/2005)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 00-9159 (Lead), 00-9180 (con), 00-9231 (xap), 00-9239 (xap), and 00-9240 (xap)

MARCELLA LANDELL,

Plaintiff-Appellee,

DONALD R. BRUNELLE, VERMONT RIGHT TO LIFE COMMITTEE, INC., Political Committee, NEIL RANDALL, GEORGE KUSSELA, STEVE HOWARD, JEFFREY A. NELSON, JOHN PATCH, VERMONT LIBERTARIAN PARTY, VERMONT REPUBLICAN STATE COMMITTEE and VERMONT RIGHT TO LIFE COMMITTEE-FUND FOR INDEPENDENT POLITICAL EXPENDITURES,

Plaintiffs-Appellees-Cross-Appellants,

V.

WILLIAM H. SORRELL, JOHN T. QUINN, WILLIAM WRIGHT, DALE O. GRAY, LAUREN BOWERMAN, VINCENT ILLUZZI, JAMES HUGHES, GEORGE E. RICE, JOEL W. PAGE, JAMES D. MCNIGHT, KEITH W. FLYNN, JAMES P. MONGEON, TERRY TRONO, DAN DAVIS, ROBERT L. SAND and DEBORAH L. MARKOWITZ,

Defendants-Appellants-Cross-Appellees,

VERMONT PUBLIC INTEREST RESEARCH GROUP, LEAGUE OF WOMEN VOTERS OF VERMONT, RURAL

VERMONT, VERMONT OLDER WOMEN'S LEAGUE, VERMONT ALLIANCE OF CONSERVATION VOTERS, MIKE FIORILLO, MARION GREY, PHIL HOFF, FRANK HUARD, KAREN KITZMILLER, MARION MILNE, DARYL PILLSBURY, ELIZABETH READY, NANCY RICE, CHERYL RIVERS and MARIA THOMPSON,

Intervenors-Defendants-Appellants-Cross-Appellees.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
	*****
5/7/01	Case heard before WINTER, STRAUB, POOLER C.JJ. (TAPE: #207) [DT]
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8/7/02	Judgment of the district court is Affirmed in part, Vacated in part and Remanded by published signed opinion filed. (CJS) [00-9159, 00-9180, 00-9231, 00-9239, 00-9240] [DT]
8/7/02	Notice to counsel re: Opinion filed. [DT]
8/7/02	Judgment filed. [Entry Date: 8/7/02] [DT]
8/7/02	Judge RKW DISSENTING in a separate opinion filed. [DT]
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10/3/02	Order filed stating re: An opinion and judgment having been filed on August 7, 2002, IT IS ORDERED that the opinion and judgment

DATE	PROCEEDINGS
	are hereby withdrawn, pending further proceedings before and amendment by the panel. As jurisdiction is retained by the panel, the mandate will not issue until further order. Before: RKW, CJS, RSP, C.JJ. (LC) [DT]
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8/18/04	Judgment of the district court is Affirmed in part, vacated in part, and remanded for further proceedings by published signed opinion filed. (CJS) [EA]
8/18/04	Judge Winter dissents in a separate opinion, filed. [EA]
8/18/04	Judgment filed. [EA]
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2/11/05	Order filed stating: A poll on in banc rehearing was conducted among the active judges of the court, a majority of whom voted to deny rehearing in banc. Judges of the court expect to file opinions in due course. (LC) [EA]
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4/11/05	Plaintiff-appellee and plaintiffs-appellees-cross-appellants filed a petition for rehearing with request for rehearing in banc from the amended opinion of the panel filed on August 18, 2004. A poll on whether to rehear the case in banc was conducted among the active judges of the court upon the request of an active judge of the court. Because a majority of the court's active judges voted to deny rehearing in banc, rehearing in banc was DENIED by order of the